

RECEIVED

JUL 19 2004

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXASBY [Signature]
DEPUTY CLERK**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION****MERRILL LYNCH, PIERCE, FENNER &
& SMITH INCORPORATED****Plaintiff**

v.

**POSADAS LIMITED and HOSPITAL
SHRINERS PARA NINOS, A.C.****Defendants**§
§
§
§
§
§
§
§
§
§**CIVIL ACTION NO. SA 01CA0420-WWJ****HOSPITAL SHRINERS PARA NINOS, A.C.'S
FIRST AMENDED ORIGINAL COMPLAINT****THE HONORABLE JUDGE OF SAID COURT:**

NOW COMES Counsel for Defendant HOSPITAL SHRINERS PARA NINOS, A.C. ("SHRINERS") and J. PHILIP KNIGHT-SHEEN as Independent Administrator with Will Annexed of the Estate of Anne Lotte Trapp-Mahau ("ESTATE OF TRAPP-MAHAU"), and file this HOSPITAL SHRINERS PARA NINOS A.C.'s AMENDED ORIGINAL COMPLAINT in the above- styled and numbered civil action number, and would respectfully show this Honorable Court as follows:

I.**PARTIES AND SERVICE OF PROCESS**

1. HOSPITAL SHRINERS PARA NINOS, A.C. ("SHRINERS") is a Mexican civil association with a permanent resident address of Suchil #152, Col El Rosario, Mexico City, Distrito Federal, C.P. 04380 Mexico, and is acting in the capacity as beneficiary of the Estate of Anne Lotte Trapp-Mahau and by and through its appointment of Executor and Administrator of the Mexican Probate Estate of Anne Lotte Trapp-Mahau, Deceased.

57

2. POSADAS LIMITED ("POSADAS") is a Cayman Islands company having its registered office at Harbour Centre, 4th Floor, North Church Street, P.O. Box 1164, Georgetown, Grand Cayman, British West Indies.

3. J. PHILIP KNIGHT-SHEEN as Independent Administrator with Will Annexed of the Estate of Anne Lotte Trapp-Mahau, Deceased ("ESTATE OF TRAPP-MAHAU"), has accepted service of process.

II. VENUE

4. This action properly lies in the Western District of Texas, San Antonio division, pursuant to 1335(a) interpleader, 28 U.S.C. §1391 (a)(2) or (d), and 28 U.S.C. §1332(a).

III. JURISDICTION

5. This Court acquired jurisdiction over the matter pursuant to 28 U.S.C. §1332(a)(2).

IV. STATEMENT OF OPERATIVE FACTS

6. MS. TRAPP-MAHAU was a resident of Cuernavaca, Mexico, at the time of her death on the 18th day of September, 1999. The Mexican Probate Court admitted her will to probate and issued an order declaring SHRINERS to be Executor of the Estate and the sole beneficiary of her Estate in the capacity of Executor. The Order of the Mexican Court specifically directs SHRINERS to take possession of the POSADAS account.

7. In April 15, 2002, Probate Court No.1 of Bexar County, Texas, appointed J. Philip Knight-Sheen ("SHEEN") as Independent Administrator with Will Annexed to the Estate of Anne Lotte Trapp-Mahau, Deceased ("ESTATE OF TRAPP-MAHAU"). On June 7, 2002, J. Philip

Knight-Sheen made demand on behalf of the Estate to turn over the assets in MERRILL LYNCH accounts in the individual name of Anne Lotte Trapp-Mahau.

8. This action was originally filed as an interpleader by MERRILL LYNCH, FENNER & SMITH, INCORPORATED ("MERRILL LYNCH"). MERRILL LYNCH named POSADAS and SHRINERS as defendants. On July 23, 2002, the Honorable Judge Orlando Garcia discharged MERRILL LYNCH as Plaintiff, leaving SHRINERS and POSADAS as parties, each asserting ownership rights to the MERRILL LYNCH account.

9. MERRILL LYNCH created POSADAS for the benefit of MS. TRAPP-MAHAU.

10. MERRILL LYNCH was, and is, in control of POSADAS, its only shareholder, FAIRFIELD, and any director, officer related to or connected with POSADAS. The shares of stock held by FAIRFIELD were held as an administrative convenience to MERRILL LYNCH and was controlled by MERRILL LYNCH employees. All of the money in the MERRILL LYNCH account held by POSADAS was transferred to that account by MS. ANNE LOTTE TRAPP-MAHAU as a vehicle for her investments.

11. None of the shares of POSADAS were ever transferred to MS. TRAPP-MAHAU or anyone other than FAIRFIELD who holds and owns legal title to said shares.

12. Defendant insists that the interests of MS. TRAPP-MAHAU were transferred from her to a trust established on the 8th day of October, 1997. Defendants are unable to produce any documents showing a gift of any assets of MS. TRAPP-MAHAU to POSADAS.

13. There are no legal documents that evidence MS. TRAPP-MAHAU knowingly transferred her ownership interests and control of her more than 7.5 million dollars to POSADAS. In fact, to the contrary, MERRILL LYNCH documents exist showing MS. TRAPP-MAHAU was

provided account statements of the MERRILL LYNCH account of POSADAS, and was granted a power of attorney of POSADAS to control the account activities.

14. SHRINERS, a Mexican non-profit association, has been named Executor and the sole heir and beneficiary of the Estate of MS. TRAPP-MAHAU by the courts in Mexico. MS. TRAPP-MAHAU was approximately sixty-seven years old in 1997 when she inherited approximately seven million dollars from her mother. MS. TRAPP-MAHAU was unsophisticated in investing and sought the services of MERRILL LYNCH, an international investing banking firm, to aid her with the investment of her money. MS. TRAPP-MAHAU opened up an individual investment account with MERRILL LYNCH containing more than \$700,000.00, and then on the advice of MERRILL LYNCH was advised to invest more than seven million dollars in a MERRILL LYNCH investment account by setting up a Cayman Islands limited liability company called POSADAS LIMITED ("POSADAS").

15. POSADAS was a vehicle entity for MS. TRAPP-MAHAU to hold, manage, and invest the money in the MERRILL LYNCH account and maintain her privacy. MERRILL LYNCH controlled every aspect of creating POSADAS, transferring all of the personal money of MS. TRAPP-MAHAU into an investment account with MERRILL LYNCH in the name of POSADAS. POSADAS named as its only shareholder a Cayman Islands company called FAIRFIELD NOMINEES LIMITED ("FAIRFIELD"). The director in control of POSADAS was yet another Cayman Islands Company called FIDUCIARY SERVICES LIMITED, and the secretary of POSADAS was yet another Cayman Islands company called HOLDING SERVICES LIMITED. Each and every one of the companies controlling or directing MS. TRAPP-MAHAU's money, either as a director, shareholder, or secretary, was controlled by MERRILL LYNCH. What this created was a multi-tiered investment account, making it almost impossible for a third party to

determine that, in fact, MS. TRAPP-MAHAU was the true owner of the money held within the MERRILL LYNCH account funded by MS. TRAPP-MAHAU.

16. Despite this elaborate contraption of layered companies created by MERRILL LYNCH to conceal MS. TRAPP-MAHAU's equitable ownership, MS. TRAPP-MAHAU was granted a power of attorney to manage and direct the financial affairs related to this account, and was sent financial statements by MERRILL LYNCH.

17. MS. TRAPP-MAHAU died September 18, 1999, and her estate was probated in both Mexico and in Bexar County, Texas, United States. The Mexican court appointed SHRINERS as Executor of the Estate and sole beneficiary. The Bexar County, Texas Probate Court appointed J. PHILIP KNIGHT-SHEEN as Executor of the United States Probate Case. Both courts named SHRINERS as the sole beneficiary of the Will of MS. TRAPP-MAHAU. The ESTATE OF MS. TRAPP-MAHAU and SHRINERS (the sole beneficiary of the Estate) have been trying to collect the account balance from POSADAS that rightfully belongs to the Estate and its beneficiaries. POSADAS is not an independent corporation fighting for the right to retain its own money. The money held in the MERRILL LYNCH account that is disputed in this case is not, cannot, and will never be the property of POSADAS.

The Defendants have no interest in doing anything more but holding on to this money with the hope that it will escheat to themselves and defeat the orders of the Mexican and Texas Probate Courts to turn the assets over to SHRINERS and the ESTATE OF MS. TRAPP-MAHAU.

V.

CAUSES OF ACTION

18. POSADAS, LTD. has claimed that it owns the MERRILL LYNCH account at issue in this case and that SHRINERS, and THE ESTATE OF TRAPP-MAHAU have no right or interest in that account. POSADAS, LTD. is allegedly a corporation wholly owned by a trust set up under a trust agreement between Anne Lotte Trapp Breitwieser and MERRILL LYNCH BANK AND TRUST (CAYMAN), LTD.

19. SHRINERS and the ESTATE OF TRAPP-MAHAU request Declaratory relief pursuant to Federal Rules of Civil Procedure 57, to determine the true owner of the assets in the MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED / POSADAS LIMITED account.

20. SHRINERS and the ESTATE OF TRAPP-MAHAU also make the following claims against POSADAS LIMITED and ask to Court to find as follows:

- a. That POSADAS, LTD. acquired the assets of MS. TRAPP-MAHAU as a fiduciary and agent holding and investing said assets for the benefit of MS. TRAPP-MAHAU.
- b. That POSADAS, LTD., by retaining said assets, and failing to return said assets to SHRINERS and the ESTATE OF TRAPP-MAHAU, breached its fiduciary duties and agency.
- c. That SHRINERS and the ESTATE OF TRAPP-MAHAU are the true equitable and legal owners of the MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED/ POSADAS LIMITED account.

- d. That POSADAS, LTD., by retaining said assets, and failing to return said assets to SHRINERS and the ESTATE OF TRAPP-MAHAU, has unjustly enriched itself to the detriment of SHRINERS and the ESTATE OF TRAPP-MAHAU.
- e. That POSADAS, LTD , by retaining said assets, and failing to return said assets to SHRINERS and the ESTATE OF TRAPP-MAHAU, have converted the MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED / POSADAS LIMITED account from its rightful owners, SHRINERS and the ESTATE OF TRAPP-MAHAU.
- f. That POSADAS, LTD., by retaining said assets, and failing to return said assets to SHRINERS and the ESTATE OF TRAPP-MAHAU, have converted the MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED / POSADAS LIMITED account from its rightful owners, SHRINERS and the ESTATE OF TRAPP-MAHAU, and the Court should impose a constructive trust, and/or a resulting trust or award restitution on the account in favor of SHRINERS and the ESTATE OF TRAPP-MAHAU.

PRAYER FOR RELIEF

WHEREFORE, SHRINERS and the ESTATE OF TRAPP-MAHAU pray for the following relief:

- 1. Ordering the return of all funds in the MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED / POSADAS LIMITED account be paid over to, or legally retitled, or returned, restitution be granted, or awarded, to SHRINERS and the ESTATE OF TRAPP-MAHAU;
- 2. Ordering the Defendants to pay pre and post-judgment interest;
- 3. Ordering the Defendants to pay Plaintiffs' reasonable costs in this action;

4. Providing such further relief as is just and necessary, including injunctive relief to support the Court's orders; and
5. Grant Declaratory Relief pursuant to Federal Rules of Civil Procedure 57.

Respectfully submitted,

TINSMAN, SCOTT & SCIANO, INCORPORATED
One Riverwalk Place, 14th Floor
700 North St. Mary's Street
San Antonio, Texas 78205
Telephone: (210) 225-3121
Telecopier: (210) 225-6235

By: 

MARK LOUIS GREENWALD
State Bar No. 08403750

**ATTORNEYS FOR HOSPITAL SHRINERS PARA NINOS
AND J. PHILIP KNIGHT-SHEEN, INDEPENDENT
ADMINISTRATOR OF THE ESTATE OF ANNE LOTTE
TRAPP-MAHAU, DECEASED**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by Certified Mail/ Return Receipt Requested to the parties set forth below, on July 19, 2004.

Charles A. Gall / Joel R. Sharp
Jenkins & Gilchrist
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202-2799


MARK LOUIS GREENWALD